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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re P.H., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,
Plaintiff and Appellant,

v.

J.M. et al.,
Defendants and Respondents;

P.H.,
Appellant.

E071322

(Super.Ct.No. RIJ1800318)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,
Judge. Affirmed.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and Julie
Koons Jarvi, Deputy County Counsel, for Plaintiff and Appellant.

Suzanne Davidson, under appointment by the Court of Appeal, for Appellant P.H.,
Minor.

Patricia K. Saucier, under appointment by the Court of Appeal, for Defendant and Respondent J.M.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Respondent P.H.

Following a contested hearing, the juvenile court declined to take jurisdiction over five-month-old P.H. (the child) and, therefore, ordered the juvenile dependency petition dismissed. Riverside County Department of Public Social Services (the department) and the child appeal the court's order, contending the court erred in failing to find the evidence supported the allegations the parents were responsible for the child's injuries. On the merits, we conclude the court did not err in failing to assume jurisdiction over the child. We therefore affirm the court's order.

I. PROCEDURAL BACKGROUND AND FACTS

A. Detention Hearing.

In March 2018, the child was born "premature at 37 weeks." She lived with J.M. (mother), P.H. (father), her paternal grandparents, and her paternal aunt. The parents were the child's primary caregivers. The other family members cared for the child "on occasion."

On May 9, 2018, the department received a referral, alleging the child had been physically abused. The parents brought the child to the hospital "because blood was coming out of her mouth, and she was crying excessively." Dr. A. Thorp observed a 1.5-centimeter laceration on the child's tongue, a two-centimeter gray bruise on her right cheek, and pinch marks on her thighs. The doctor opined the cut on her tongue was too

deep to be self-inflicted, and the bruise on her cheek was “uncommon” for a one-month-old. A CT scan showed no “gross evidence of acute intracranial hemorrhage.” Dr. Thorp suspected abuse, opining the child’s examination was “concerning for non-accidental trauma.” The department interviewed the parents. Father noticed blood in the child’s mouth and notified mother. Shortly thereafter, they took the child to the hospital. The parents offered no explanation for the injuries. They denied any history of criminal activity, mental health problems, substance abuse, or domestic violence, and both tested “negative for all substances.”

On May 10, 2018, the department interviewed the child’s medical staff at Loma Linda University Children’s Hospital. A forensic examination revealed healing rib fractures, swelling to the back of the head, a cut on the tongue, bruising on the thighs, a tear inside the anus, and fissures around the outside of the anus. The child tested positive for cannabinoids. Dr. Young, a forensic pediatrician, opined the child’s injuries were inflicted by nonaccidental trauma. A suspected child physical abuse and neglect examination report noted: “This is a very young infant with a significant number of traumatic injuries. There is no plausible history provided to explain the findings. These findings are consistent with child physical abuse.” Based on the medical report, the department believed the child was at risk for physical abuse. It therefore sought and obtained a protective custody warrant to remove the child from the parents’ custody.

On May 14, 2018, the department filed a juvenile dependency petition under Welfare and Institutions Code¹ section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), (d) (sexual abuse), and (e) (severe physical abuse-child under five), based upon allegations of severe physical abuse and sexual abuse. The juvenile court detained the child and ordered supervised visitation and reunification services for the parents.

B. Jurisdiction/Disposition Reports.

According to the jurisdiction/disposition report filed June 7, 2018, the department relied upon the prior medical reports and opinions,² and recommended the juvenile court sustain the allegations in the dependency petition, declare the child a dependent of the court, remove her from her parents' custody, and deny reunification services pursuant to section 361.5, subdivision (b)(5) and (b)(6). A contested jurisdiction hearing was set for August 7, 2018, and later continued to September 5.

In an addendum report filed July 31, 2018, the department continued to recommend no services even though updated medical information contradicted prior findings. The May 10, 2018 CT scan of the child's chest was "normal," with no fractures detected, and her urine drug screen was "negative for THC"; her May 31, 2018 skeletal bone survey showed there were "[n]o fractures detected, and the abdomen and pelvis

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

² The medical reports are inconsistent regarding some of the child's injuries. For example, one report noted the CT scan indicated there was "right temporal scalp hematoma/swelling," but also stated, "[h]ead: no trauma, no swelling."

[were] normal”; and a July 17, 2018 orthopedic examination revealed “no evidence of a fracture on the left femur.” The parents were enrolled in parenting education classes, attended counseling, and had moved out of the paternal grandparents’ home. They visited the child twice a week, for two hours each visit, and they had requested “extended visits.” The foster mother reported the parents were “appropriate[] during the visits and [were] bonding with” their daughter.

According to an addendum report filed August 30, 2018, the parents had completed their parenting program and continued to engage in counseling. They remained consistent in their visitation, acted appropriately, and were bonding with the child. The paternal grandparents had been assessed for placement; however, placement with them was denied due to their “extensive criminal history and [child welfare services] history.” The department continued to hold the parents responsible for the child’s “non-accidental injuries,” opining return of the child to the parents’ care may “lead to further serious injury or death.”

C. Contested Jurisdiction Hearing.

On September 5, 2018, the department filed a first amended dependency petition under section 300 subdivisions (a), (b), (d), and (e), striking any reference to the child’s

previously alleged fractures and exposure to cannabinoids.³ The parties acknowledged receipt of the amended petition and waived formal reading. The contested jurisdiction hearing began with the testimony of Dr. Sapna P. Patel, the child’s pediatrician. Dr. Patel described the child’s treatment at Pomona Valley Hospital and her subsequent “well-baby” checkups through May 4, 2018. The doctor observed no evidence of serious injuries (including scratch marks on the child’s thighs or anal tears or fissures) during the checkups, and she did not “note any type of concerns, whatsoever,” with respect to the parents’ care of the child. Dr. Patel opined anal fissures are not uncommon with newborns because they “go pooh-pooh a lot and . . . parents are new, they don’t know how to wipe, and babies can be acidic,” which “cause[s] fissures too.” However, she testified tongue problems were not common among infants, and she ruled out “oral thrush” as causing the child’s tongue laceration.

Mother invoked her Fifth Amendment privilege against self-incrimination and did not testify after being called to the stand by father’s counsel.

Father was advised of his Fifth Amendment privilege, but elected to testify. He said on May 9, 2018, he was at home with the child while mother was at work.⁴ He

³ The amended petition alleged while in the care and custody of the parents, “the infant suffered serious injuries, including but not limited to, swelling to the back of the head, a laceration on the tongue, bruising on the cheek, *and* abrasions and bruising on her thighs which are in different stages of healing” (§ 300, subds. (a) [as to father only], (b), (e)); and “[w]hile in the care and custody of the parents, the infant suffered two tears inside her anus, as well as fissures at the outside opening of the anus, which were consistent with being inflicted by an adult size fingernail” (*id.*, subds. (b), (d)).

⁴ The department pointed out that mother “had very recently gone back to work on Sunday, May 6, 2018.”

offered no explanation for the child's "spontaneous bleeding." However, he believed her cheek may have been bruised when she fell asleep with her pacifier. He theorized the hard "backing" of the pacifier caused the bruise. Father testified he, mother, the paternal grandparents, and paternal aunt shared the residence with the child; however, he and mother were the child's primary caretakers. Father denied doing anything to cause the child's injuries.

At the conclusion of the hearing, the juvenile court announced its decision from the bench. It noted the "case looks a lot different than it did at detention," and, although the case "came into this court with allegations of very, very serious injuries, and although there's still allegations of injuries, they are less serious than originally thought." The court observed the parents to be "two very young inexperienced, and . . . hardworking parents who, from what the Court is able to discern, did not really try to hide or conceal anything." The court observed father as he testified and found him to be credible despite being nervous and defensive. Concerning some of the child's injuries, the court found "at least some of the explanations proffered are plausible." Based on all the evidence, the court found the allegations of the petition to be not true and ordered the child returned to the parents' custody.

II. DISCUSSION

Appellants contend the juvenile court erred in failing to find the evidence supports the allegations the parents were responsible for the child's injuries. We disagree.

A. Standard of Review

An “order dismissing a dependency petition, and failing to take jurisdiction, is an appealable order.” (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 197 (*Sheila B.*)). “At a jurisdiction hearing, the juvenile court ‘shall first consider . . . whether the minor is a person described by Section 300, and for this purpose, any matter or information relevant and material to the circumstances or acts which are alleged to bring him or her within the jurisdiction of the juvenile court is admissible and may be received in evidence. However, proof by a preponderance of evidence, legally admissible in the trial of civil cases must be adduced to support a finding that the minor is a person described by Section 300.’ [Citation.] In dismissing the dependency petition, the juvenile court implicitly found that appellant [(the department)] had failed to meet this burden.” (*Id.* at p. 198.)

On appeal, “the appropriate standard of review is for this court to determine whether the trial court’s order was supported by substantial evidence. Substantial evidence is evidence that is ‘reasonable, credible, and of solid value’; such that a reasonable trier of fact could make such findings. [Citation.] [¶] It is axiomatic that an appellate court defers to the trier of fact on such determinations, and has no power to judge the effect or value of, or to weigh the evidence; to consider the credibility of witnesses; or to resolve conflicts in, or make inferences or deductions from the evidence. We review a cold record and, unlike a trial court, have no opportunity to observe the appearance and demeanor of the witnesses. [Citation.] ‘Issues of fact and credibility are questions for the trial court.’ [Citations.] It is not an appellate court’s function, in short,

to redetermine the facts. [Citation.] Absent *indisputable evidence* of abuse—evidence no reasonable trier of fact could have rejected—we must therefore affirm the juvenile court’s determination.” (*Sheila B.*, *supra*, 19 Cal.App.4th at pp. 199-200, italics added.)

B. Substantial Evidence Supports the Juvenile Court’s Dismissal of the Petition.

Applying the above standard of review, we conclude the juvenile court’s determination to dismiss the petition must be upheld.

The evidence shows that although father and mother were primarily responsible for the child’s care, they were not solely responsible for the child. Rather, the paternal grandparents and aunt provided childcare when needed. According to the department’s addendum to the jurisdiction/disposition report, the paternal grandparents could not be approved for placement of the child because of their “extensive criminal history and [child welfare services] history.” Father and mother consistently and emphatically denied causing their daughter’s injuries, and they immediately sought medical treatment upon noticing them. The exact nature, cause and time frame of the child’s injuries remained in dispute. The juvenile court “listened and watched” father testify and found him to be credible. The updated medical evidence downgraded the initial diagnosis that the child suffered severe injuries,⁵ causing the court to comment the allegations of injuries “are

⁵ For purposes of section 300, subdivision (e), severe physical abuse “means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food.”

less serious than originally thought.” Dr. Patel testified she had no concerns regarding the parents’ care of the child, she had observed no evidence of serious injuries (including scratch marks on the child’s thighs or anal tears or fissures) during the child’s “well-baby” checkups and, in her opinion, anal fissures are not uncommon with newborns.

The juvenile court weighed the evidence presented and was persuaded the parents were not the cause of the child’s injuries. “The testimony of a single witness is sufficient to uphold a judgment [citation], and an appellate court may not evaluate that testimony as a basis for reversal.” (*Sheila B.*, *supra*, 19 Cal.App.4th at p. 200.) Our review of the record does not persuade us there was *indisputable evidence* the parents caused the child’s injuries and that the injuries amounted to severe physical abuse. Absent such evidence, we conclude the court’s determination the child does not come within the provisions of section 300, subdivisions (a), (b), (d), and (e), must be upheld, and its order must stand.

III. DISPOSITION

The juvenile court’s order is affirmed.

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McKINSTER
Acting P. J.

We concur:

MILLER
J.

RAPHAEL
J.